

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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In the Matter of )  
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Calling Party Pays Service Option )  
in the Commercial Mobile Radio Services )  
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WT Docket No. 97-207

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**COMMENTS OF THE  
UNITED STATES TELEPHONE ASSOCIATION**

**I. INTRODUCTION**

The United States Telephone Association ("USTA") respectfully submits these comments on the above-captioned Notice of Inquiry regarding Calling Party Pays ("CPP") billing capabilities of CMRS providers.<sup>1/</sup> USTA's members include approximately 1200 incumbent local exchange carriers ("LECs") that could be directly affected by the Commission's actions in this docket. USTA members support wide availability of CMRS services. Affiliates of many USTA members provide CMRS services, and unaffiliated CMRS providers are valued customers of USTA members.

As demand has grown dramatically for CMRS services such as cellular, PCS, and paging, USTA members have worked to provide the network capabilities needed to meet the needs of end users, whether on the wireline or wireless networks. Thus, USTA is uniquely situated to address the issues raised in the NOI.

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<sup>1/</sup> See WT Docket No. 97-207, Notice of Inquiry, FCC 97-341 (rel. Oct. 23, 1997) (the "NOI").

USTA cautions the Commission to avoid viewing CPP as a regulatory solution to hypothetical problems involving local exchange competition.<sup>2/</sup> Mandatory CPP would distort competition and raises universal service concerns. The Commission deregulated the billing and collection services of the LECs over a decade ago, and should not attempt to re-regulate such services by seeking to require incumbent LECs to bill and collect for CPP.

At the same time, a reasonable goal of this NOI should be to identify means by which providers of CPP can offer the service in a commercially and technically stable environment. To these ends, the Commission should affirm the legal right of CMRS providers to collect their charges for completed calls to CMRS phones, assuming that callers are provided adequate notification of potential charges and provide affirmative consent to pay for their calls.<sup>3/</sup> Moreover, industry standard-setting forums, not Commission regulation, should be the means for developing technical standards and resolving billing format issues related to CPP.

## II. THE COMMISSION SHOULD TAKE ONLY LIMITED ACTION REGARDING CPP AT THIS TIME

### A. The Competitive Market, Not Regulation, Should Determine CPP Availability

The Commission should avoid unwarranted regulatory intrusion into the CMRS marketplace. In particular, the Commission should not seek to require incumbent LECs to bill and collect for CMRS providers' CPP service. As discussed in Section II.D below, the

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<sup>2/</sup> See *id.* ¶ 1.

<sup>3/</sup> An example of such consent would be a response to a recording that lists applicable charges, ending with an instruction that to complete the call, the calling party must hit a certain key, such as "1."

Commission has not regulated LEC provision of billing and collection services since 1986. There is no reason to reimpose expensive and unnecessary regulation on LECs with respect to CPP, which is merely one type of billing service offered by incumbent LECs.

CMRS providers now have many different ways of adjusting their billing practices to best suit their competitive needs, through alternatives to CPP such as First-Minute-Free ("FMF") calling for incoming calls, or similar packages of services that include an initial fixed number of airtime minutes at a flat rate.<sup>4/</sup> These responses are within the control of the CMRS providers themselves and avoid technical and coordination issues with incumbent LECs. Conversely, many CMRS subscribers can use caller ID to block frivolous or inconvenient calls for which they do not wish to pay.

The Commission should not rely on CPP as a tool for steering the competitive development of CMRS. As the NOI highlights, the competitive impact of CPP is uncertain. The NOI describes two possible scenarios resulting from increased availability of CPP. Some claim that "the demand for CMRS services could increase either by increasing the minutes of usage or increasing the number of subscribers."<sup>5/</sup> Alternatively, and more plausibly from a market perspective,

[T]he difference in pricing between local telephone service and the CPP service option could deter some calls from wireline to mobile subscribers and may hinder efforts to minimize distinctions between telephony service provided on wireline and wireless networks. Widespread use of CPP could decrease the extent to which some consumers view CMRS and wireline telephony as close substitutes because the wireline consumer's incremental cost to place a local call to a CMRS phone could significantly increase while

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<sup>4/</sup> See NOI ¶¶ 8, 14.

<sup>5/</sup> *Id.* ¶ 12.

there would be no similar change in the consumer's incremental cost to place a local wireline call.<sup>6/</sup>

USTA believes that the second scenario is by far the more likely if CPP is mandated. The best way to resolve these different views of the impact of CPP is to permit the competitive market for CMRS services to function. The worst course would be to force an outcome through regulation, such as by requiring incumbent LECs to perform the billing and collection associated with CPP.

Indeed, USTA is concerned that mandatory CPP could raise universal service questions, both practically and under section 254 of the Communications Act.<sup>7/</sup> The affordability of service, the first universal service principle of section 254(b), could be threatened in areas where CPP causes increases in wireline end users' total monthly charges for local service. Incumbent LECs' wireline customers could incorrectly confuse the increased CPP charges on their local bills with increased charges for local wireline service. They would certainly notice that their total rates have increased. Most seriously, for end users on limited budgets, increased charges due to CPP may deter them from purchasing more advanced services, contrary to section 254(b)(2)'s principle promoting access to advanced services.

Reliance on market forces regarding CPP can avoid these disruptive consequences. If market conditions provide incentives for the use of CPP in a service area,<sup>8/</sup> CMRS providers and incumbent LECs should be free to negotiate the necessary arrangements based on their relative

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<sup>6/</sup> *Id.* ¶ 18.

<sup>7/</sup> *See* 47 U.S.C. § 254(b).

<sup>8/</sup> CPP may be most attractive to wireline users who are accustomed to paying for local service on a per-minute basis. As indicated in paragraph 17 of the NOI, CPP may be more easily accepted in those countries where local service is billed on a usage basis, rather than at a flat rate as is largely the case in the United States.

perceptions of market and competitive realities. In this regard, USTA must point out to the Commission that much of the information requested in the NOI is competitively sensitive, such as data on the demand effects of differences in rate levels between wireline and wireless services, and customer acceptance of local measured service.<sup>9/</sup>

**B. For CPP To Succeed In The Marketplace, Consumers Must Be Protected And Payment Obligations Must Be Affirmed**

USTA agrees that a key to acceptance of CPP in the competitive marketplace is the availability of effective means of informing callers that they will be charged for calling a CMRS phone, and informing them of the magnitude of the charges.<sup>10/</sup> Such measures can be implemented in many ways, but consumers should be able to make an informed decision regarding their calling choices. The Commission also requests comment on "steps that wireless carriers would need to take to ensure that calling parties who are not subscribers are subject to a contractual payment obligation, if the notification mechanism is considered insufficient for this purpose."<sup>11/</sup> An important preliminary step in assuring the commercial stability of CPP offerings would be affirmation by the Commission that CMRS providers have the right to collect (or to contract with others to collect) charges from callers for completed calls to CMRS phones, assuming that proper notification and affirmative consent take place.<sup>12/</sup>

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<sup>9/</sup> See NOI ¶ 18.

<sup>10/</sup> See *id.* ¶ 20.

<sup>11/</sup> *Id.* ¶ 21.

<sup>12/</sup> See *supra* note 3.

C. The Many Technical Issues Raised By CPP Should Not Be  
The Subject Of Regulation

As noted in the NOI, CPP service would require infrastructure, contractual, and billing collection modifications that could limit its establishment in the United States.<sup>13/</sup> These modifications would be extensive and costly. Such costs could particularly affect small and rural incumbent LECs. Many USTA members' networks do not have the technical capability to provide the billing information required by CPP, let alone the ability to provide call branding as a means of informing callers of charges applicable to CMRS calls.

These technical issues are additional reasons to rely on market forces, rather than regulatory mandate, for CPP to develop. Incumbent LECs have incurred many costs mandated by recent regulatory initiatives stemming from the Telecommunications Act of 1996. The additional costs that incumbent LECs would bear if the Commission mandated CPP could well be wasted.

USTA believes that industry standards-setting bodies, rather than the Commission, should develop national technical standards and address issues such as common billing formats for CMRS providers that offer CPP and incumbent LECs. The service areas of many CMRS providers, including those affiliated with USTA members, extend across the service areas of multiple LECs. Industry-based standards for technical matters and billing formats, adopted through private-sector processes, would improve the ability of both CMRS providers and incumbent LECs to serve the public. Commission-mandated standards would be both unwise and unwarranted, since they could

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<sup>13/</sup> See NOI ¶ 23.

unintentionally limit service options while becoming outmoded as CPP develops consistent with the marketplace.

D. The FCC Should Not Re-Regulate LEC Provision of CPP Or Any LEC Billing And Collection Service

At present the Commission has no authority to require incumbent LECs to perform billing and collection services. The Commission deregulated LEC provision of such services in 1986, finding that the market for billing and collection services was so competitive that it is unnecessary to require LECs to provide these services as tariffed common carrier offerings.<sup>14/</sup> Nor did the Commission define billing and collection service as an unbundled network element pursuant to the Telecommunications Act of 1996 or the Commission's Local Interconnection Order.<sup>15/</sup> Rather, section 3(29) of the Communications Act includes "information sufficient for billing" as an example of a "network element,"<sup>16/</sup> clearly indicating that Congress had no intention of reclassifying billing services themselves as regulated network elements.

As a practical matter, the billing services -- including CPP -- that incumbent LECs offer to CMRS providers for airtime charges are similar to those offered to interexchange carriers or competitive local exchange carriers. For the Commission to single out CPP for re-regulation

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<sup>14/</sup> See *Detariffing of Billing and Collection Services*, CC Docket No. 85-88, 102 FCC 2d 1150 (1986), *recon. denied*, 1 FCC Rcd 445 (1986).

<sup>15/</sup> See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 15499 (1996) ("Interconnection Order"), *vacated in part and aff'd in part sub nom. Iowa Utilities Board*, Nos. 96-3321, et al. (8th Cir. July 18, 1997).

<sup>16/</sup> 47 U.S.C. § 153(29).

would unreasonably discriminate among these services and also severely distort the competitive market for these services that the Commission determined to exist in the mid-1980s.

### III. CONCLUSION

USTA respectfully requests that the Commission refrain from requiring incumbent LECs to bill and collect for CMRS providers' CPP service. Although the Commission should consider taking certain limited actions regarding the commercial environment in which CPP may be offered, requiring LECs to deploy this service would be contrary to the public interest.

Respectfully submitted,

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